IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

Crl.MC.No. 1124 of 2007()

CC.792/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM

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PETITIONER: ACCUSED 1 AND 2

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1. LEENA, W/O.ANIL KUMAR,
   LEENA BHAVAN, CHEMPAZHANTHY, THIRUVANANTHAPURAM.

2. ANIL KUMAR, LEENA BHAVAN,
   CHEMPAZHANTHY, THIRUVANANTHAPURAM.

BY ADV. SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU

RESPONDENTS: STATE & DEFACTO-COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. ASOKAN, S/O.RAGHAVAN,
   AMBADI HOUSE, CHEMPAZHANTHY,
   THIRUVANANTHAPURAM.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1124 OF 2007

Dated this the 9th day of April, 2007

ORDER

The petitioners are accused 1 and 2 in a prosecution – C.C.No.792/03, pending before the Judicial Magistrate of the First Class-III, Thiruvananthapuram, for the offences punishable, inter alia, under Secs.380, 447 and 188 read with Sec.34 of the IPC. Cognizance has been taken by the learned Magistrate on the basis of a final report submitted by the police after due investigation. Cognizance was taken as early as in 2003 and the petitioners have at this belated hour come to this Court with this Crl.M.C. Why did the petitioners not come earlier before this Court? It is conceded that the petitioners have appeared before the learned Magistrate; that the learned Magistrate, after hearing the parties, had framed charges against the petitioners. The petitioners have admittedly not challenged the charges framed by the learned

Magistrate by invoking the revisional jurisdiction vested in the superior courts.

2. The learned counsel for the petitioners submits that essentially and basically the prosecution is based on an interim order passed by the civil court. He contends that the prosecution under Sec.188 of the IPC was not maintainable inasmuch as the complaint had not been made by the authority which passed the order.

3. I must alertly remind myself that the prayer is to invoke the powers under Sec.482 of the Cr.P.C. It is an extraordinary inherent jurisdiction which is available to this Court under Sec.482 of the Cr.P.C. Such jurisdiction is not to be invoked, as a matter of course, and is liable to be invoked sparingly in exceptional cases in aid of justice.

4. I shall not encumber the records with any finding on the disputed questions. Suffice it to say that I do not find any valid reasons to invoke such extraordinary inherent jurisdiction at this belated hour in respect of a case cognizance in which was taken as early as in 2003. I do not also find any reason to invoke such powers in respect of a matter where charges have already been framed and the framing of such charges remain

unchallenged.

5. Suffice it to say that I am satisfied that this is a fit case where the petitioners must be left to seek the ordinary and normal course available to them under law at the post charge stage. They must raise all their relevant and appropriate contentions and claim acquittal before the learned Magistrate. I do not find any reason to invoke the extraordinary inherent powers in the facts and circumstances of this case.

6. In the result, this Crl.M.C. is dismissed. The learned counsel for the petitioners submits that if unnecessary insistences were made on the personal appearance of the petitioners, it would cause great hardship, loss and inconvenience to the petitioners. I have no reason to assume that the learned Magistrate would insist unreasonably on the personal appearance of the petitioners on all dates of posting. The petitioners can make necessary application for exemption and the learned Magistrate must consider such application on merits and in accordance with law.

Sd/-
(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge